

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Continue Implementation and
Administration of California
Renewables Portfolio Standard
Program.

Rulemaking 08-08-009
(Filed August 21, 2008)

**REPLY COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES
IN RESPONSE TO ASSIGNED COMMISSIONER'S RULING
REGARDING RENEWABLES DEVELOPMENT
IN IMPERIAL VALLEY AND EVALUATION OF
RENEWABLE PROCUREMENT CONTRACTS**

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March 6, 2009

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits the following reply comments in response to the Assigned Commissioner's Ruling (ACR) dated February 3, 2009, in R.08-08-009. DRA greatly appreciated the range of viewpoints represented in the opening comments and will respond herein to certain of the Comments by other parties.

II. PROPOSALS AND ISSUES

Remedial Measures for 2010 Solicitation

In its opening comments, DRA supported an Imperial Valley-only RFO in 2010 as a remedial measure to ensure that Imperial Valley proposals are adequately and expeditiously considered. Several parties pointed out that remedial measures may not be necessary to encourage proposals from the Imperial Valley, due to the great deal of focus on the need for projects in there and because proposals from that area will benefit from the availability of transmission under the Least-Cost Best-Fit (LCBF) Methodology. Insofar as an adequate array of

proposals is received in response to the 2009 RFO, DRA recognizes that remedial measures may not be necessary in 2010. However, should the 2009 RFO yield insufficient proposals from the Imperial Valley, an Imperial Valley-only RFO would be the most direct way to encourage proposals from the region.

Issue 1: Changes to Rules Regarding Contract Failure

In opening comments, DRA supported the Staff Proposal that seller nonperformance by less viable projects should not be used to defer an RPS deficit greater than 0.25% of the prior year's retail sales. While we continue to support this proposal, we acknowledge that the utilities have relied upon the Commission's approval in counting contracts toward their RPS goals. It, thus, may be appropriate to apply this rule only for newly approved contracts.

DRA also appreciates the proposal of Green Power Institute (GPI) that the appropriate place to discount the likelihood of less viable projects delivering power is in the RPS planning process rather than at the time compliance targets are not met. DRA would consider supporting a proposal to discount the energy expected from less viable projects when determining the amount of power to be contracted under an RFO, and eliminating seller nonperformance as an excuse under the flexible compliance rules altogether. But the details of how such a system would operate in practice would need to be clarified and an opportunity provided to fully consider all implications.

Issue 2: Criteria Regarding Contract Viability and Failure

In its opening comments, DRA supported the use of a PPA-specific Project Viability Calculator (PVC). Those PVC scores would determine the extent to which a PPA could be amended, while we proposed that the project should be explicitly allowed to update its viability showing at the time a contract amendment is requested. In response to the Comments received by other parties, DRA agrees that there may indeed be instances where it is not appropriate to deny amendments to less viable projects, if a contract is cost-effective and the project's viability will be increased as a result of the amendment. The PVC should not be used to prevent

the development of viable renewable projects. DRA believes that while the PVC score can be used as a general guideline with regard to contract amendments, DRA recognizes that there may be legitimate exceptions to that policy, and therefore DRA does not support a hard-and-fast rule preventing the amendment of less viable contracts.

Issue 3: Changes to Rules to Ensure Viable Projects are Selected

In opening comments, DRA supported the concept of the PVC as proposed by Energy Division, but pointed out that many of the criteria in the Staff's proposed PVC are vague and need to be clarified. In response to the Comments of other parties, DRA is even more convinced that the PVC needs further work. DRA believes that such clarification can be accomplished for use in the 2009 RFO. DRA recommends that an updated Staff Proposal be circulated and workshops be held to refine the PVC for use in the 2009 RFOs. DRA appreciates many of the specific recommendations to improve the PVC raised by other parties, but also appreciates that the often overlapping proposed calculators submitted by several parties need to be quickly worked through to arrive at a standardized PVC that will be a useful tool in evaluating proposed 2009 contracts.

DRA objects to the proposal of GPI to add a "financial viability" measure to the PVC that is based on the stream of income proposed in the offer. The goal of an RFO is to buy power in the most economical fashion, which is likely to be from a supplier that can produce power at a lower cost (rather than the "typical" cost cited by GPI). Applying a financial viability standard that requires a minimum level of income could thwart the goals of the RFO process by eliminating otherwise viable offers as well as preventing the market from maturing to the point where the production costs of renewable power are reduced.

Issue 4: Changes to Rules Regarding Milestones, Credit, Collateral, and Deposits

DRA supported the Staff's Proposal linking PPA-specific PVC scores to PPA development security. However, other parties' comments cause DRA to

question the advisability of this proposal. The purpose of security is to provide a disincentive to abandon a signed contract and to compensate the utility for the costs of replacing those contracts. It is not to reward or punish projects based on their viability score. DRA is concerned about thwarting an otherwise viable project by requiring excessive security, or increasing the likelihood that viable projects will breach their contracts to sell elsewhere at a higher price because of lower security.

Therefore, DRA now believes that linking development security to project viability measures may not be appropriate, and at a minimum would require further study to justify. The Union of Concerned Scientists, instead, proposed that the level of security be considered an element of viability (higher security serves to increase the PVC score). DRA believes that this type of sliding scale should be examined further, making it possible for a project to voluntarily offer a higher level of security to improve its PVC score.

III. CONCLUSION

Many parties agree that a standardized PVC will benefit the RPS program. Several parties have contributed valid, well thought out ideas and criticisms of the Staff's proposed PVC. DRA looks forward to continuing to work with parties to refine the PVC. DRA recommends that Staff update the PVC and that the Commission schedule a workshop or workshops with the goal of expeditiously

reaching consensus on as many issues as possible so that the PVC may become a useful tool in evaluating 2009 RPS offers.

Respectfully submitted,

/s/ MITCHELL SHAPSON

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March 6, 2009

VERIFICATION

I, Mitchell Shapson, am counsel of record for the Division of Ratepayer Advocates in proceeding R.08-08-009 authorized to make this verification on the organization's behalf. I hereby verify that the statements in **"REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES IN RESPONSE TO ASSIGNED COMMISSIONER'S RULING REGARDING RENEWABLES DEVELOPMENT IN IMPERIAL VALLEY AND EVALUATION OF RENEWABLE PROCUREMENT CONTRACTS"** filed on March 6, 2009, are true and correct to the best of my knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **March 6, 2009** at San Francisco, California.

/s/ MITCHELL SHAPSON

MITCHELL SHAPSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document **“REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES IN RESPONSE TO ASSIGNED COMMISSIONER’S RULING REGARDING RENEWABLES DEVELOPMENT IN IMPERIAL VALLEY AND EVALUATION OF RENEWABLE PROCUREMENT CONTRACTS”** in **R.08-08-009** by using the following service.

☒ **E-MAIL SERVICE:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on **March 6, 2009**, at San Francisco, California.

/s/ REBECCA ROJO

Rebecca Rojo

N O T I C E

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